

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:20-cv-00376-MR-WCM

SHERRI WILKES,

Plaintiff,

v.

BUNCOMBE OPERATIONS, LLC

doing business as

Harmony at Reynolds Mountain

Defendant.

ORDER

This matter is before the Court following the filing of a Second Amended Complaint (Doc. 8) and Corrected Second Amended Complaint (Doc. 9) by Plaintiff and a Motion to Dismiss filed by Defendant. Doc. 6.

On April 29, 2021, Defendant filed the Motion to Dismiss. Doc. 6.

On May 24, 2021, Plaintiff filed the Second Amended Complaint and Corrected Second Amended Complaint. Docs. 8 & 9. In the Corrected Second Amended Complaint, Plaintiff states that Defendant consents to the filing of this Second Amended Complaint. Doc. 9 at 1.

On May 27, 2021, Defendant filed a Stipulation confirming its consent to the filing of the Corrected Second Amended Complaint, while reserving its right to move to dismiss the complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure. Doc. 10.

Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, a party may amend its pleading only with the opposing party's written consent or the court's leave. Here, Defendant has provided its written consent to filing of the Corrected Second Amended Complaint.

"The general rule ... is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect." Young v. City of Mount Ranier, 238 F.3d 567, 573 (4th Cir. 2001); see also Fawzy v. Wauquiez Boats SNC, 873 F.3d 451, 455 (4th Cir. 2017) ("Because a properly filed amended complaint supersedes the original one and becomes the operative complaint in the case, it renders the original complaint 'of no effect.'"); Colin v. Marconi Commerce Systems Employees' Retirement Plan, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004) ("Earlier motions made by Defendants were filed prior to and have been rendered moot by Plaintiffs' filing of the Second Amended Complaint"); Ledford v. Eastern Band of Cherokee Indians, No. 1:20-CV-005-MR-DCK, 2020 WL 1042235 at 1 (W.D.N.C. March 3, 2020) ("It is well settled that a timely-filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings may be denied as moot").

In light of the filing of the Corrected Second Amended Complaint, the Motion to Dismiss (Doc. 6) will be denied as moot. This denial is without prejudice to Defendant's right to challenge the Corrected Second Amended Complaint, if appropriate.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss
(Doc. 6) is **DENIED AS MOOT**.

Signed: May 27, 2021

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

